


IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

**FILED**  
**DEC 27 2006**  
  
CLERK

TIM AND CARLA GEFFRE ON BEHALF OF  
SKYLER GEFFRE,

Plaintiffs,

v.

LEOLA SCHOOL DISTRICT 44-2,

Defendant.

CIV. 06-1047

**COMPLAINT**

COMES NOW Plaintiffs, Tim and Carla Geffre on behalf of Skyler Geffre, who file this Complaint against Defendant, Leola School District, as an appeal as an aggrieved party from the administrative proceedings, styled by the Hearing Examiner as Tim and Carla Geffre, Parents of S.G., a minor child, Appellants, v. Leola School District, A South Dakota School District, Respondent and in support thereof state as follows:

**I.**

**Jurisdiction and Venue**

1. This is an action to review a final decision of a hearing examiner who works in the State of South Dakota Office of Hearing Examiners for the South Dakota Department of Education and Cultural Affairs, Special Education Programs. A copy of the Findings of Fact, Conclusions of Law, Decision and Order, dated November 17, 2006, is attached hereto and by reference made a part hereof. This Court has jurisdiction under the Individuals with Disabilities Education Act, 20 U.S.C. §1415(i)(2), (3)(A) (2004), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794,

the Americans With Disabilities Act (ADA), 42 U.S.C. §12132, as well as 28 U.S.C. §1331. Venue is before this Court pursuant to 28 U.S.C. §1391(b).

## **II. Parties to the Action**

2. Plaintiffs, Tim and Carla Geffre, are parents of Skyler Geffre, an eligible “child with a disability” under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 U.S.C. §1400 *et seq.* Skyler Geffre is also an “otherwise qualified handicapped person” under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794. Skyler Geffre is a “qualified individual with a disability” under §12131 of the Americans with Disabilities Act. Geffres are currently, and were at all times applicable to this action, residents of Leola, South Dakota, which is located within the Leola School District in McPherson County, South Dakota. Tim and Carla Geffre, on behalf of their son, Skyler Geffre, are parties who had an adverse decision rendered against them by the Hearing Examiner for the South Dakota Office of Hearing Examiners on behalf of the South Dakota Department of Education and Cultural Affairs. Plaintiffs, Tim and Carla Geffre, reside in the District of South Dakota.

3. Defendant, Leola School District 44-2, is a recipient of federal funds and must comply with the IDEA, 20 U.S.C. §1400 *et seq.* and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794. The Leola School District is a “public entity” under the ADA and is prohibited from discriminating against Skyler Geffre. Leola School District must also comply with the rules promulgated by the South Dakota Board of Education. Leola School District was the resident school district for Skyler Geffre and was responsible for developing and implementing Skyler’s individual education program (IEP) and for providing him with a free appropriate public education (FAPE) in the least restrictive environment during all times relevant to this action. Leola School District is an independent school district that is situated and operates within the District of South

Dakota. Leola School District may be served with process by serving its Superintendent, Mr. Jamie Hermann, at the administrative offices of the Leola School District in Leola, South Dakota, during regular business hours.

### III.

#### **Appeal from Administrative Proceeding**

4. This is an appeal from a Decision of the Special Education Hearing Examiner for the State of South Dakota. The Hearing Examiner issued her Decision on November 17, 2006, pursuant to the IDEA, 20 U.S.C. §1415(f), (h). The Hearing Examiner's Decision is a final judgment appealable under 20 U.S.C. §1415(i). Plaintiffs are an aggrieved party under 20 U.S.C. §1415(i)(2).

### IV.

#### **Issues Before the Hearing Examiner**

5. Plaintiffs, Tim and Carla Geffre, filed a "Notice of Parent's Request for a Due Process Hearing" on August 16, 2006, to address two issues, one relating to the Leola School District's failure to fully reimburse Geffres for transportation expenses incurred while providing the related service of transportation for the District, transporting Skyler to and from Dakota School in Aberdeen, South Dakota, from September 20, 2005, through October 26, 2005. The second issue dealt with the Leola School District's failure to educate Skyler in the least restrictive environment appropriate for him. The Hearing Examiner conducted a hearing on September 25 and October 16, 2006. In her Decision, the Hearing Examiner restated the issues to be decided as follows:

1. Whether Parents are entitled to reimbursement for mileage to transport SG to Dakota School from Leola, in the amount of \$409.60, together with reimbursement for their time, reasonable attorney's fees and costs and prejudgment interest?

The Hearing Examiner ordered the Leola School District to reimburse Geffres \$409.60, plus prejudgment interest, but refused to order reimbursement sought for Geffres' time and order reimbursement be paid per-mile at a rate higher than the state statutory minimum.

2. Whether Leola Public School provided a Free and Appropriate Education in the least restrictive environment to SG?

The Hearing Examiner ruled that Skyler was receiving a free appropriate public education in the out-of-district day program at Dakota School and that he remain placed there through the end of the 2006-07 school year or until Skyler's Individualized Education Program (IEP) Team changes his placement.

Plaintiffs appeal from the Decision of the Hearing Examiner.

#### V.

#### Aggrieved Party

#### Cause of Action

6. Plaintiffs assert that the Decision of the Hearing Examiner in this case should be reversed on the basis that a preponderance of the evidence and applicable law do not support the conclusion that the Leola School District provided Skyler Geffre with a free appropriate public education as it relates to the issue of Defendant's refusal to transport Skyler to and from Dakota School from September 20, 2005, through October 26, 2005, and the Hearing Examiner's ruling that Plaintiffs were entitled to mileage at 32 cents per mile, but not entitled to reimbursement for their time in transporting Skyler and not entitled to a higher rate than the state statutory minimum.

7. Plaintiffs further assert that the Decision of the Hearing Examiner in this case should be reversed on the basis that a preponderance of the evidence and applicable law do not support the conclusion that Defendant is educating Skyler Geffre in the least restrictive environment appropriate for him by placing him at Dakota School, a day-program within the

residential program called Dakota House, which is part of Northeastern Mental Health Center in Aberdeen, South Dakota.

8. Plaintiffs are further aggrieved by the Hearing Examiner's Decision because many of her findings, conclusions, and reasoning lack evidentiary support, are contrary to the record, and are simply erroneous.

9. Plaintiffs are further aggrieved by the Hearing Examiner's decision because she failed to base her decision on, and wholly ignored, applicable federal laws and regulations, federal policy, case law, and/or state statutes and administrative rules.

**VI.**

10. Plaintiffs have exhausted all of their administrative remedies.

**VII.**

11. The Leola School District's position is not supported by a preponderance of the evidence, is contrary to law, and is not justified on either the law or the facts.

**VIII.**

12. If Plaintiffs are successful in this appeal, attorneys' fees may be awarded per 20 U.S.C. §1415(i)(3)(B).

WHEREFORE, Plaintiffs respectfully pray:


1. That this Court, pursuant to 20 U.S.C. §1415(i)(2)(C), receive and consider the record of the administrative hearing, and, if determined appropriate and requested, hear additional evidence from the parties relating to developments that have occurred since the administrative hearing of September 25 and October 16, 2006;
2. That this Court rule that the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision ordering Geffres to be limited to the state minimum mileage rate per mile

and prejudgment interest for transportation reimbursement be reversed and that this Court order the Leola School District to reimburse Geffres for their time in transporting Skyler to and from Dakota School for the Leola School District and that their per mile reimbursement be awarded at a higher rate than the state minimum based on the equities of the case;

3. That this Court review the Hearing Examiner's final Decision ruling that Skyler Geffre had been provided a free appropriate public education in the least restrictive environment by the Leola School District under the IDEA and, based on a preponderance of the evidence, reverse that decision and order that Skyler's IEP Team immediately meet to review his current services, determine any additional services he may require, and place him at the Leola public High School;
4. That this Court award attorneys' fees and costs associated with the decision rendered by the Hearing Examiner if Plaintiffs are prevailing party on appeal;
5. That this Court also award attorneys' fees and costs associated with this appeal;
6. That this Court order oral argument; and
7. That this Court grant such other and further relief as it deems just and necessary.

Dated the 27<sup>th</sup> day of December, 2006.

SOUTH DAKOTA ADVOCACY SERVICES

BY:   
John A. Hamilton  
2121 W. 63<sup>rd</sup> Place, Suite 30  
Sioux Falls, South Dakota 57108  
(605) 361-7438  
Attorney for Plaintiffs

**Certificate of Service**

The undersigned hereby certifies that on the 27<sup>th</sup> day of December, 2006, he sent, by first class mail, postage prepaid, one true and correct copy of Tim and Carla Geffres' Summons and Complaint, as well as a copy of the Notice and Acknowledgement of Receipt of Summons and Complaint, to:

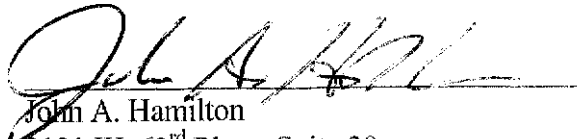
Mr. Jamie Hermann, Superintendent/CEO  
Leola School District 44-2  
820 Leola Avenue  
PO Box 350  
Leola, SD 57456

A copy of these documents has also been sent to Defendant's attorney of record.

Mr. Carlyle Richards  
Richards & Oliver  
415 S. Main Street, Suite 222  
P.O. Box 114  
Aberdeen, SD 57402-0114

Dated this 27<sup>th</sup> day of December, 2006.

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